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SUMMARY RECORD OF THE 1215th MEETING

Held at Headquarters, New York,
on Friday, 26 March 1993, at 3 p.m.

Chairman: Mr. ANDO

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of the Dominican Republic (continued) (CCPR/3/70/Add.3)

1. At the invitation of the Chairman, Mr. Pichardo Olivier and Mrs. Abreu de Polanco (Dominican Republic) took places at the Committee table.

2. Mrs. HIGGINS said that she fully endorsed the views expressed by Mr. Prado Vallejo concerning the punishment for torture provided for under the Prison System Act of 1984. If the statistics given were correct, it was clear that the Act had not been effective. The Committee should recommend that more stringent sanctions be introduced for the torture and ill-treatment of detainees by public officials.

3. Turning to paragraph 50, she said that she would welcome an explanation of the difference between a penitentiary and a presidio. She was deeply concerned at the information provided in paragraph 58 to the effect that over 70 per cent of the prison population in the Dominican Republic was being held pending trial. The use of non-working days was hardly a solution, and other measures were needed to tackle the problem. It was clear from paragraph 57 that the 48-hour time-limit was routinely disregarded and legislation was needed stipulating that prisoners must be released if they had not been charged within that period.

4. With regard to article 12 of the Covenant, she agreed with Mr. Sardi that the punishment of exile was hard to justify. The relevant criterion should be whether the offences in question came within the terms of article 12, paragraph 3, of the Covenant. She noted that article 8, paragraph 4, of the Constitution provided for restrictions on freedom of movement. She wondered what such restrictions would entail and what kind of offences would give rise to them.

5. With regard to article 17 of the Covenant, she wondered whether it was appropriate, in a country which recognized the right to freedom of speech, for sanctions to be imposed against anyone insulting a minister of the Catholic religion. In any case, she would be interested to know why the sanctions applied to insults against Catholic ministers only, and not ministers of other faiths. On the question of religious sects, she could understand the desire to limit their activities if they posed a threat to the security of the State, but felt that it was unjustified to take action against them merely on the grounds that their beliefs did not correspond to any known religion.

6. With regard to article 19 of the Covenant, she was concerned that the provision contained in article 8, paragraph 6, of the Constitution prohibiting the expression of thoughts "prejudicial to the dignity and morality of individuals, to public policy or to propriety" represented an alarming limitation on freedom of expression. She agreed with the remarks made by other members concerning trade union rights under articles 21 and 22 of the Covenant in the special export-processing zones. Unionization was now permitted, but

(Mrs. Higgins)

when major companies had used large-scale dismissals to prevent the introduction of unions, there had been no effective intervention by the Government to guarantee the rights provided for under law. Recourse to the courts had apparently been ineffective and she would be interested to know what grounds had been cited for the dismissal of such cases.

7. With regard to article 24 of the Covenant, while she welcomed the frank admission that the provisions of Dominican law on the matter were incompatible with the Covenant, she wanted to know what practical steps would be taken to remedy the situation. The remarks pertaining to article 27 of the Covenant appeared somewhat contradictory. On the one hand, the report maintained that there were no ethnic, religious or language minorities in the Dominican Republic, while on the other it claimed that minorities were treated fairly and suffered no discrimination. Clearly, religious and linguistic minorities did exist, and it would be helpful if the Dominican Republic acknowledged that fact and provided more information on their situation.

8. Mr. LALLAH wondered whether the compilers of the report had sought information from the Ministry of Labour concerning the difficulties facing trade unions as well as the bare statistics concerning their numbers. He would be interested to know whether a special law on working conditions in the export processing zones enabled trade unions to operate freely in defence of workers' rights, as was usual in countries where such zones existed. Although the registration and operation of trade unions were now accepted in the zones, there had been many reports of extensive victimization of union officials, particularly by multinational companies. He wished to know whether sanctions were available to deal with such cases, whether victimization constituted an offence, and whether the Government was seeking to end such practices.

9. Miss CHANET expressed concern at the information given in paragraph 58 of the report that over 70 per cent of the prison population in the Dominican Republic was being held pending trial. She would welcome information concerning the legal arrangements governing pre-trial detention, particularly its maximum legal duration and its average duration in practice. She felt that the solution of using non-working days was barely adequate to address the situation. The Dominican delegation had said that incommunicado detention was used in accordance with the Covenant. She would be interested to know how that was done, since the Covenant contained no specific provisions on the matter.

10. According to a recent report of the United States State Department, health and sanitary conditions in prisons were extremely poor and minors were being detained together with adults. More information was needed on those questions. There had clearly been no improvement in the situation regarding the torture and ill-treatment of prisoners by public officials and the civil authorities needed to lay down proper rules and ensure that they were implemented. She would also welcome further information concerning the case of 27 prisoners, mentioned in the State Department's report, whose release order had been totally disregarded by the police.

11. With regard to article 13 of the Covenant, she was concerned about the astonishing number of restrictions on aliens provided for in article 13 of the Migration Act. Paragraph 6 of that article was particularly worrying and she

(Miss Chanet)

was curious to know what was meant by "incapacity". She also wanted to know what procedural guarantees were available to aliens facing deportation under article 13, paragraph 11 (e). In addition, she found it difficult to understand how a deportation order could be converted into a prison sentence of up to two years, as provided for in paragraph 11 (f). Such a sentence seemed very harsh, particularly since it was not open to appeal.

12. Mr. AGUILAR expressed surprise that, according to paragraph 17 of the report, a Dominican official who committed a crime on the orders of a superior could not be charged or brought to trial. That was a most disturbing situation and gave the impression that the Dominican legal system was still very backward and had failed to take account of important developments in international law. Although the report claimed that men and women enjoyed equal rights, some anomalies remained in the Constitution, which allowed Dominican women who married an alien to acquire the nationality of their husband but did not give men the same right. In addition, a female alien marrying a Dominican man could acquire his nationality, whereas a male alien marrying a Dominican woman did not enjoy the same right.

13. The report indicated that the death penalty had been abolished in 1924. However, that statement did not reveal the full picture, since extrajudicial killings had been commonplace under the dictatorship which had ruled the Dominican Republic for many years. Moreover, the most recent report of the United States State Department affirmed that the police had been responsible for various extrajudicial killings, yet no police officers had ever been brought to justice. Such incidents appeared to be on the increase and there were also reports of security forces firing on public demonstrations and of police death squads executing suspects. Again, those responsible had escaped with impunity. There were serious deficiencies in the administration of justice, judges were subject to intimidation, and, when convictions were obtained, sentences were rarely commensurate with the gravity of the offences committed.

14. The infant mortality rate given in paragraph 43 was alarmingly high. That was hardly surprising in a country where 47 times more resources were devoted to military spending than to health and education combined. The assertion that there were no registered cases of poliomyelitis in the country was meaningless, since the disease had been eradicated some years previously.

15. The State Department report had cited numerous cases of torture of prisoners by public officials, as well as the use of beatings to obtain confessions, yet the authorities had done nothing to investigate the situation. Under article 5 of the Prison System Act, victims of torture and ill-treatment were entitled to complain to the governor or the General Prison Directorate, but he wondered how effective those remedies were in practice. There had been repeated complaints that children in detention were being placed together with adults and he would like to know what the real situation was. With regard to the segregation of prisoners, there seemed to be a contradiction in the report between paragraph 53, which indicated that different categories of prisoners could be housed in a single building, and paragraph 63, which referred to separate units. He would welcome clarification.

(Mr. Aguilar)

16. Paragraph 56 of the third periodic report indicated that there was no standard procedure under Dominican law for informing relatives of anyone's detention and even spoke of disappearances. It was clear, therefore, that article 9 of the Covenant remained unsupported in Dominican legislation. It also appeared, from the text of article 13 of the Migration Act, as quoted in paragraph 70 of the third report, that the legal provisions governing aliens differed significantly from the remainder of the Dominican Republic's legislation; it was clear, for example, that habeas corpus was not respected in the case of persons detained for drug trafficking or other crimes and that persons could be held in detention in the Dominican Republic for up to two years simply for having entered the country illegally or for becoming indigent.

17. Mr. BRUNI CELLI said it appeared from the report that the Dominican Republic's judicial system was contrary to the spirit of article 14 of the Covenant. Paragraph 76 of the report in particular seemed to provide evidence of that. Moreover, it was known that an ex-President of the Republic had been tried before a court appointed by the new Government. Although the report indicated that efforts were being made to reform the judicial system, he wondered if anything was being done to ensure the right to an impartial trial until such time as a new judicial system was instituted.

18. Mr. WENNERGREN said that, although article 4 of the Dominican Constitution provided for independent branches of Government, there seemed to be no provision for ensuring that judicial orders would be complied with. In one case, that of Alessandro Cabrera, a person held in detention had twice been ordered released but the police had refused to comply. He asked for an explanation of what had happened in that case.

19. Although article 8 of the Constitution provided for the free expression of opinion, it had been reported that a private radio station in the Dominican Republic which wanted to broadcast in Creole had been threatened with closure if it did so. He asked for an explanation of that report.

20. Referring to paragraph 17 of the third report, he asked if it meant that public officials who had committed crimes on orders from their superiors were exempt from ordinary punishment for such crimes.

21. Mrs. EVATT, referring to paragraph 91 of the report and to the prohibition of certain broadcasts in Creole, asked whether it had been established by any authority that such broadcasts would be subversive or a threat to public order and why it had been decided to impose a blanket ban on broadcasting in a particular language rather than to prosecute specific offences. She asked whether there was any provision for review of such bans and commented that without such review by an independent judicial authority it was difficult to establish the legality of such acts.

22. Referring to article 26 of the Covenant, she asked whether any progress had been made in implementing the draft law on eliminating discrimination in civil, commercial, penal and agrarian matters.

23. Mr. MAVROMMATIS said it seemed clear from the third report that legislation still existed in the Dominican Republic which was incompatible with the Covenant

(Mr. Mavrommatis)

in at least three areas. Firstly, the form of exile in use in the Dominican Republic was certainly not permitted by the Covenant. There seemed also to be discrimination in favour of the State religion, and in that connection he asked how the Dominican Republic protected the right of parents and guardians to ensure the religious and moral education of children in accordance with their religious beliefs. With respect to the protection of minorities, he endorsed the questions raised by Ms. Higgins. He would also note, in connection with restrictions on trade union activities, that collective bargaining and the right to organize did not seem greatly respected in the Dominican Republic.

24. Mr. EL-SHAFEI, referring to article 7 of the Covenant, asked what measures existed to ensure that torture was not only prohibited by law but did not occur in practice. Referring to articles 9 and 10 of the Covenant, he noted that there had been reports of cases of death while in detention and asked whether the Government could refute those allegations. He also wished to have information on detention in institutions other than prisons, whether there were limitations on the repeated use of the time-limit of 48 hours for pre-trial detention, when solitary confinement was imposed and whether the United Nations Standard Minimum Rules for the Treatment of Prisoners were known and accessible to prisoners. Noting that allegations had been made of beatings and torture under detention, he asked whether the delegation was in a position to refute those allegations.

25. Referring to article 13 of the Covenant, he asked for information on what crimes were subject to punishment by exile and whether exile was applicable to citizens as well as aliens. In connection with the legal remedies available to aliens described in paragraphs 69 to 74 of the report, he asked whether there were special courts for aliens in the Dominican Republic and, if so, whether the judgements of those courts could be appealed to the Supreme Court.

26. Referring to article 18 of the Covenant, he asked what practice was followed for recognizing religions and what religions were not allowed under Dominican law.

27. Mr. FRANCIS expressed disappointment at the information submitted with regard to a case of torture and the shooting by a member of the security forces of a person taking part in a peaceful protest, and asked what progress had been made in the investigation of the latter incident.

28. At a later time, he wished the Committee to take up the question of information which reached the Committee from unofficial sources.

29. Mrs. ABREU de POLANCO (Dominican Republic) assured the Committee that she was aware that its members served in their individual capacity and not as Government representatives.

30. There seemed to be some misunderstanding among members of the time-limit of 48 hours for pre-trial detention referred to in paragraph 57 of the third periodic report. That was the period within which evidence justifying the continued detention of an accused person must be submitted to a court. The figure of 70 per cent given in the next paragraph referred to persons for whom

(Mrs. Abreu de Polanco, Dominican Republic)

such evidence had been submitted who were being held pending trial, and the reason it was so high was because of the shortage of resources in the judiciary. As the report indicated, the Dominican Republic was making efforts to remedy that deficiency. There was no specific provision in Dominican legislation covering cases of torture while under detention. Anyone perpetrating an act of torture, whether or not the victim was under detention, was brought to justice and subjected to severe penalties.

31. Religious sects were banned only for insulting other religions. Such cases had occurred in the past; at present, however, as the United States State Department's report on human rights recognized, complete freedom existed for not only the Catholic but all religions in the Dominican Republic.

32. Replying to a question asked by Mr. Pocar at an earlier meeting, she said that there were regulations governing the use of firearms by the military, and those who violated them were brought before first a military and then a civilian court and severely punished.

33. As the United States State Department report noted, no citizen of the Dominican Republic had been exiled.

34. The Dominican Republic had adopted a new Labour Code in June 1992 which clearly established freedom of association. That new code was now being enforced, with the approval of ILO, which had warmly received the Dominican Republic's last report to it.

35. In reply to Mrs. Evatt's question concerning freedom of the press in connection with the suspension of radio broadcasts in Haitian Creole, she said that, while Dominican legislation required broadcasts to be in Spanish, that was not the reason for the suspension; rather, as the radio station in question had been broadcasting news and information to Haitians regarding the political upheaval in Haiti, it had been deemed to be intervening in that country's internal affairs.

36. With regard to the student who had been held without charges, she said that both the evidence found in his possession at the time of his arrest and the confession which he had signed while in police custody provided clear indications of his involvement in two bombing incidents in Santo Domingo. However, since there were two court orders for his release on grounds of insufficient evidence, he would, under normal circumstances, be released. In any case, investigations were continuing.

37. The practice of torture was not envisaged by Dominican legislation. While excesses were occasionally committed, those responsible were brought to justice, and the practice was tending to disappear as a result of constant vigilance.

38. In reply to Mr. Bruni Celli's question concerning the method of selecting judges, she said that, as noted in paragraphs 76 and 77 of the report, the Justice Commission was endeavouring to overcome the problems in that area; as a first step, the names of newly elected judges had been disseminated by the media

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Dominican Republic)

so that the public could have an opportunity to raise objections to the selection of a particular individual. The plan to establish a Judicial Council had received broad support, and all the political parties which were planning to run candidates in the forthcoming elections had promised to amend the Constitution.

39. In reply to Mr. Aguilar's question concerning discrimination against women, she said that women and men were equally free to seek and hold public office. If a Dominican woman married an alien, she had the option of retaining her nationality or adopting her husband's nationality.

40. She had no specific information concerning the situation of the professor referred to Mr. Pocar, but would ensure that the Committee was subsequently provided with all relevant documentation.

41. The concerns expressed by the members of the Committee would be taken into account in the process of amending the Constitution. Many provisions of Dominican legislation were outdated; for example, the Civil Code dated from 1882 and the Penal Code from 1884. A proposal had already been made to amend article 13 (f) of the Migration Act of 1939. Her Government requested the assistance and cooperation of the international community in bringing its legislation into line with the provisions of the Covenant, and hoped that, by the time its next periodic report was submitted, the existing deficiencies would have been remedied.

42. Mr. PICHARDO OLIVIER (Dominican Republic) said that the death penalty was no longer imposed in his country. If police killings occurred, the individuals responsible were tried before a police or a military tribunal and, if convicted, were subjected to civilian penalties. To the best of his knowledge, death squads did not operate in the Dominican Republic. There were, of course, serious deficiencies in the Dominican justice system because of the country's lack of resources, which made judges vulnerable to bribery attempts; the plan to create a Judicial Council was designed to solve such problems.

43. The function of the General Prison Directorate was to monitor the conduct of prison officials and prison conditions in general. Many prisons were, of course, badly underequipped. In some cases, minors had inadvertently been incarcerated with adults, but the errors had been discovered and corrected. Preventive detention did not exist; the authorities could detain a suspect for up to 48 hours, after which they must either charge or release him. As noted in paragraph 61 of the report, State prosecutors could appeal against writs of habeas corpus, but only in drug-trafficking cases.

44. Mrs. ABREU de POLANCO (Dominican Republic) said that non-governmental organizations enjoyed complete freedom of action in her country and were held in high esteem by her Government, which was grateful to them for organizing seminars on human rights.

45. Mr. PRADO VALLEJO said that he was still not fully satisfied with the information provided concerning the general status of the Covenant in the

(Mr. Prado Vallejo)

Dominican Republic; what was needed was not just official promulgation of the Covenant, but broad dissemination of its provisions by the Government. The country's legal system did not guarantee all the rights embodied in the Covenant: the police did not always respect the right to life, the practice of torture was uncontrolled, and the Government frequently did not investigate complaints, despite its obligation to do so. The expulsion of Haitian workers was unjustified and inhumane. Freedom of association was not guaranteed; trade unionists had been persecuted. The police did not obey court orders to release suspects; preventive detention extended well beyond the 48-hour period mandated by law. Freedom of religion was not guaranteed; minority religions were subject to discrimination. Lastly, prosecutors could appeal against writs of habeas corpus. The Government must make a basic effort to bring its domestic legislation into line with international human rights instruments.

46. Mr. FODOR said that he, too, was disappointed that the dialogue with the State party had not been more fruitful. With regard to section I (g) of the list of issues, while welcoming the indications provided by the State party of its willingness to cooperate more fully with the Committee in the future, he emphasized that, in respect of communication No. 193/1985, there was no need for the Committee to make further recommendations; rather, it was incumbent upon the State party to take all measures required to avoid a violation of the Covenant.

47. Discrimination against Haitian workers was continuing, although that had been an issue during the Committee's consideration of the State party's second periodic report. Concerns also persisted with regard to the excessive use of force by the police, including extrajudicial killings, torture and the ill-treatment of detainees; poor health and sanitary conditions in prisons; forced labour by Haitian workers, whose working conditions resembled slavery; the expulsion of aliens under 16 years of age and over 60 years of age; delays in the judicial process and the practice of employing children to do dangerous work.

48. Mr. MAVROMMATIS said that the pace of promotion of human rights and fundamental freedoms in the Dominican Republic had slowed considerably; 15 years after the State party's ratification of the Covenant, its status was still uncertain. There was a large body of legislation which was not in conformity with the provisions of the Covenant. The situation of Haitian workers remained a matter of pressing concern. It was disappointing that, by the time of its third periodic report, the State party had been unable to inform the Committee of any actions which it had taken to remedy the situation.

49. Miss CHANET said that she, too, was disappointed that so little progress had been made since the previous occasion on which the State party had come before the Committee. There appeared to be a misunderstanding on the part of the Dominican authorities as to their obligations under the Covenant and the nature of the reporting exercise; for example, it was in relation to article 8 of the Covenant, and not to labour conditions in general, that questions had been raised concerning the situation of Haitian workers. Furthermore, throughout the State party's report, the articles of the Covenant had been treated as though they were simply chapter headings; the text of the Covenant

(Miss Chanet)

had not been cited anywhere. The Committee had not been informed of how the Migration Act had been or would be amended to bring it into conformity with the Covenant. She continued to be troubled by the constraints imposed on Haitian workers and the issue of whether labour contracts were or were not concluded under duress. The Committee had been told that Presidential Decree No. 233-91 had been suspended only, not abrogated; it was to be feared that the Government could still make use of that legislation if it so wished. With regard to articles 7 and 9 of the Covenant, it was regrettable that persons held in custody were still subjected to ill-treatment, and that no information had been provided concerning the 27 persons who should have been released under a court order; in many cases, it appeared that such orders were routinely ignored.

50. Mr. WENNERGREN said that the answers provided by the delegation had not been those which the Committee had hoped to obtain, especially in view of the length of time in which it had been engaged in a dialogue with the State party. While information from various sources indicated that children no longer worked in the sugar-cane fields, the conditions affecting Haitian workers could only be defined as forced labour, which was incompatible with article 8 of the Covenant. Presidential Decree No. 233-91 was in flagrant violation of a number of rights embodied in the Covenant and should be totally abolished, not just suspended. It was to be hoped that the Government would, as it had promised, provide training in human rights to its police and military personnel.

51. Mrs. HIGGINS agreed with Mr. Prado Vallejo and said she shared the concerns expressed by Mr. Fodor. In addition, she believed that the State party's response to the Committee's questions regarding the banning of Creole-language broadcasts had been inadequate. In her view, the representative's response did not resolve the Committee's concerns regarding specific statements contained in the report. In particular, neither the report nor Mrs. Abreu de Polanco's response had addressed the issues of penalties for police and armed forces personnel found guilty of using torture, the use of preventive detention and summary deportations. On some questions both the report and the representative's responses had been candid, but in general she found them disappointing.

52. Mr. POCAR said the representative's responses had confirmed his concern that many questions about the report were destined to go unanswered. He wondered how consistent the rule of law actually was in the Dominican Republic. It was unclear to him, for example, how torturers were punished in the absence of specific penalties in Dominican law. In addition, the Dominican representative's statement regarding the use of military courts to try police and military personnel for firearms abuses had been unsatisfactory. In fact, the response appeared to suggest that the Dominican Republic had been systematically violating article 14 of the Covenant. He hoped that the Dominican Government's sincere desire to change the human rights situation in its country would result in more detailed and focused responses to the Committee's request for information.

53. Mrs. EVATT said she too had been disappointed with the State party's response. It was clear from other information available to the Committee that

(Mrs. Evatt)

existing Dominican laws were incompatible with Covenant provisions. In the absence of an independent judiciary, individuals would continue to be denied recourse when their rights were violated. The Dominican Republic needed to establish a truly independent agency for the investigation of complaints regarding human rights abuses. In addition, there was a pressing need for judges and members of the police and armed services to be instructed about the purposes and provisions of the Covenant. Moreover, citizens in general should be better informed about their rights under the Covenant, and there should be procedures for lodging formal complaints about abuses. She suggested that members' concerns could be included in the Committee's comments at the time of the State party's next periodic report.

54. Mr. BRUNI CELLI said that the human rights problems addressed by the Committee in its review of the State party's third periodic report remained serious. Despite the fact that the Dominican Republic had had three decades of civilian rule and had signed the Covenant as long ago as 1978, it had not yet amended its Constitution to bring it into line with the Covenant. He agreed that the concerns of Committee members should be transmitted to the Government of the Dominican Republic, in particular those recommendations regarding independence of judges and the need for greater awareness of Covenant provisions among judges, police personnel, the armed forces and prison employees.

55. Mr. AGUILAR said there appeared to be significant incompatibilities between existing Dominican laws and provisions of the Covenant. With respect to Haitian nationals in the Dominican Republic, he said that forced labour persisted and that other fundamental freedoms continued to be violated systematically. Moreover, the Dominican representative's responses appeared to conflict with statements made in the report. He agreed with the suggestion that the Committee's recommendations should be transmitted to the Dominican Government.

56. Mr. NDIAYE agreed with the comments of Mr. Fodor regarding the third periodic report. Not only had the report been incomplete, but even on the questions which it had addressed the Committee required additional information before it considered the fourth periodic report.

57. The CHAIRMAN summarized the concerns expressed by previous speakers and said that they concerned seven issues: the status of the Covenant in Dominican law; compliance with the Covenant provisions on forced labour; the use of summary expulsions; protection of the rights of detainees; firearms abuses by members of the military and the police; the illegal prohibition of Creole-language broadcasts; and the need for an independent judiciary.

58. Mrs. ABREU de POLANCO (Dominican Republic) said there had been some confusion about her response to the question regarding prison sentences imposed upon members of the military and police forces. She said sentences of 10 years had been imposed not for torture but for the illegal use of firearms. She also said that her Government would take note of the Committee's recommendations. Although the Dominican Republic had not been able to comply consistently with all the provisions of the Covenant, it had no intention of violating the Covenant in a systematic manner. The problem of Haitian nationals working in the Dominican Republic was of concern to her Government. A report by the United

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Dominican Republic)

States State Department noted that conditions in that regard had not deteriorated. Haitian nationals in the Dominican Republic did have documentation, but there had been a problem with workers remaining in the country after their work contracts had expired. It was not a simple matter to revise the Constitution or in the Civil and Penal Codes, but the Government was committed to doing so in the future.

59. The CHAIRMAN suggested the date of 31 March 1994 as a deadline for the submission by the Niger of its second periodic report to the Committee.

The meeting rose at 6.05 p.m.